

STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION

NOV 27 2000

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CITY OF CRYSTAL LAKE, ILLINOIS,

Petitioner,

v.

UNION PACIFIC RAILROAD COMPANY,

Respondent.

Petition of the City of Crystal Lake for an Order
approving a beautification plan as being in
compliance with the requirements of
92 Ill.Admin.Code 1535.205 on the Union
Pacific Railroad Company right-of-way within
500 feet of the crossings of the Union Pacific
Railroad Company's tracks with the following
streets and highways:

- (1) Grant Street
- (2) Main Street
- (3) Crystal Lake Avenue
- (4) Walkup Avenue

CASE NO. TOO-0110

PETITION

NOW COMES the Petitioner, the City of Crystal Lake, McHenry County, Illinois, an Illinois home rule municipal corporation (Petitioner), and respectfully petitions the Illinois Commerce Commission (Commission as follows:

1. Petitioner is a municipal corporation in the State of Illinois.
2. The Union Pacific Railroad Company (Respondent) is a registered rail carrier operating in the State of Illinois.
3. Petitioner has planted or intends to plant a variety of bushes, shrubbery, trees and other decorative vegetation upon Respondent's right-of-way within 500 feet of the at-grade crossing of Respondent's tracks and right-of-way, which run in a northwesterly/south-easterly direction between Main Street and Grant Street just northerly of the Crystal Lake

DOCKETED

commuter station, and along Main Street between Crystal Lake Avenue and U.S. Route 14 (Northwest Highway).

<u>Location of At-Grade Crossing</u>	<u>Group Exhibit No.</u>
(1) Grant Street	Group Exhibit A
(2) Main Street	Group Exhibit B
(3) Crystal Lake Avenue	Group Exhibit C
(4) Walkup Avenue	Group Exhibit D

These plantings have been or will be installed pursuant to a proposed Beautification Lease, the terms of which has been agreed to between Petitioner and Respondent to assure that Respondent's right-of-way in this area does not become unsightly, and the plantings beautify said right-of-way, and enhance the aesthetics of the right-of-way along the streets enumerated above, and the commuter station located between Main Street and Grant Street, north of Woodstock Street.

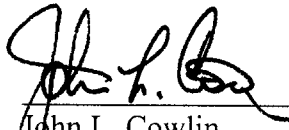
4. The at-grade crossings enumerated in Paragraph (3) hereof all have automatic flashing light signals, bells and gates approved by the Commission to warn motorists of trains approaching or occupying said at-grade crossings of the main line tracks. Automatic flashing light signals and bells are located at intersections with the Main Street spur tracks.
5. Respondent has alleged that certain of the plantings may be in violation of 625 ILCS 5/18c-701(3) and 92 III.Admin.Code 15305.205, both concerning obstructions at crossings.
6. On or about the month of March, 2000, representatives of Petitioner and Respondent inspected the above-enumerated at-grade crossings to determine whether, and if so, which plantings should be trimmed or removed in order to comply with the spirit and intent of the law and Commission rule cited in Paragraph 5 hereof. Attached as Group Exhibit E is a copy of the proposed Beautification Lease Agreement between Petitioner and Respondent, therein outlining a proposal detailing planting and maintenance requirements that is acceptable to Petitioner and Respondent.
7. Petitioner requests that its Group Exhibits A through E, inclusive, beautification plans, as modified by the recommendations, if any, made by the staff, be approved by the Commission as complying with the requirements of 92 III.Admin.Code 1535.205, and agrees to maintain the plantings in such a manner as to ensure that the view of approaching trains to travelers on the highway does not become materially obscured.
8. Petitioner understands that it is responsible for notifying the Commission of any change in the condition of the plantings and crossings which are the subject of this proceeding which could have an adverse affect on the view of approaching trains to travelers on the highway or streets at such crossings.

9. Petitioner respectfully requests that the relief sought in this Petition be granted without hearing.

Respectfully Submitted

CITY OF CRYSTAL LAKE, ILLINOIS, an
Illinois home rule municipal corporation,

BY:



John L. Cowlin
City Attorney

City Attorney's Office
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**RAILROAD RIGHT-OF-WAY
LANDSCAPE BEAUTIFICATION LEASE**

UNION PACIFIC RAILROAD COMPANY (hereinafter called "Company") hereby leases to the CITY OF CRYSTAL LAKE, MC HENRY COUNTY, ILLINOIS (hereinafter called "Lessee") to use for planting, pruning and otherwise maintaining landscaping ("Landscape Beautification") the Union Pacific right-of-way in Crystal Lake, Illinois, shown in red on Exhibit B, attached hereto and hereby made a part hereof (the "Premises"), subject to the express terms and conditions of this Lease, the Specifications (the "Specifications") attached hereto as Exhibit A and hereby made a part hereof. This Lease (the "Lease") shall become effective _____, 1999 and shall run for a period of one year and thereafter unless terminated as hereinafter provided.

Lessee agrees to pay Company as rent for the Premises the sum of TEN AND NO/100 DOLLARS (\$10.00) per year payable annually in advance. Nothing herein shall limit or modify the terms and conditions of any other agreement between Company and Lessee for use of Company's right-of-way or any portion of the Premises for other than Landscape Beautification.

This Lease is given upon the following express terms and conditions herein and the Specifications and should the Lessee at any time violate any of said terms or conditions, or use or attempt to use the Premises for any other or different purpose than that stated herein, then the Company may, at its option, immediately terminate this Lease.

As a material consideration for entering into this Lease and without which Company would not enter into same, Lessee covenants and agrees to indemnify, save harmless and protect the Company and the Commuter Rail Division of the Regional Railway Authority ("Metra") from and against any and all loss, damage, injury, claim, demand, fine, lawsuit, judgment and/or liability, and any and all costs, expenses and legal fees in connection therewith by reason of injuries to or death of persons and/or loss of or damage to property and/or violation of any law, ordinance or regulation ("Claim") to the extent such Claim arises out of or is connected with Lessee's Landscape Beautification of the Premises or any act or omission of (i) Lessee, its officers, employees, contractors, or agents, and/or (ii) and other person(s) performing any work or service for or on behalf of the Lessee on or about said Premises or arising out of their presence on said Premises. Notwithstanding the foregoing, Lessee shall not be obligated to indemnify and hold harmless Company and Metra for

personal injury, death and/or property damage to the extent arising out of the acts or omissions of the Company, Metra or the officers, employees, agents or contractors of either the Company or Metra.

Company reserves the right to use, occupy and enjoy the Premises and its tracks, property and right-of-way, for such purpose, in such manner, and at such time as it shall desire, the same as if this instrument had not been executed by it, including the right to lease or license any of the Premises for commercial or industrial purposes without any prior notification to Lessee.

Lessee accepts the Premises subject to the rights of any party, including Company, in and to any existing roadway, easements, permits or licenses. Lessee further accepts the Premises subject to rights of any party, including Company, in and to any existing telephone, telegraph, or other wires, and poles and facilities of any kind whatsoever, whether or not of record.

Company reserves the right to maintain or relocate its existing facilities, or to construct and thereafter maintain new facilities, in the vicinity of the Premises with no liability for damages to Lessee's interests or Premises resulting from such beautification activities.

Lessee recognizes and assumes all responsibility for all present and future environmental liability or responsibility imposed under applicable environmental laws, regulations or any other similar requirements relating to any contamination of the Premises or groundwater thereunder or discharge or release to adjacent property arising from or in any respect aggravated or altered by any operations or activities by, or any equipment or facilities used by or permitted on the Premises by Lessee in performance of Landscape Beautification (the foregoing hereinafter referred to as "Lessee Landscape Beautification Operations"). Lessee, therefore, agrees to indemnify and hold harmless Company, its officers, agents, and employees from any and all liability, fines penalties, claims, demands, loss or lawsuits brought by any third party or governmental agency under any theory of law against Company seeking to hold Company liable for any investigation, response or cleanup costs, penalties or damages, whether personal property or environmental, for any contamination of any property or groundwater thereunder or discharge or release to adjacent property arising out of or in any respect aggravated or altered by Lessee Landscape Beautification Operations. Lessee agrees that the above indemnity extends to any liability resulting from or arising out of Lessee's implementation of any investigation, response or cleanup plan approved by the United States Environmental

Protection Agency or companion state agency. Lessee further agrees to undertake at its own expense any investigation, response or cleanup of any contamination of the Premises and groundwater thereunder arising from or in any respect aggravated or altered by any Lessee Landscape Beautification Operation and to promptly notify Company of any event, notice, claim, demand or litigation which involves or alleges contamination of the Premises, the groundwater thereunder or a discharge or release therefrom to adjacent property. The Lessee is not responsible for any environmental contamination of the Premises that occurred prior to the execution of this Lease. Lessee agrees to waive any and all statutes of limitations applicable to any controversy or dispute arising out of this paragraph, and Lessee further agrees that it will not raise or plead a statute of limitations defense against Company in any action arising out of Lessee's failure to comply with this paragraph.

Company, its agents, employees and authorized contractors shall have the right to enter the Premises or any part thereof, at all reasonable hours, for the purpose of inspecting the Premises to determine if Lessee is complying with all terms and conditions of this Lease and/or to determine through inspection and/or testing if any hazardous condition, pollution or contamination is present or threatened. Lessee agrees to cooperate with Company in any such inspection and to provide at Company's request any and all permits, reports, or records of any kind, relating to any materials used, stored, treated or disposed of on the Premises.

Either party hereto shall have the right at any time to cancel this Lease by giving ten (10) days' notice in writing. At the expiration for the time limited by said notice, the Lessee shall promptly, and in the manner directed by Company, restore the Premises to the condition it was in prior to the leasing of same. Upon default of the Lessee to do so, the Company may accomplish the same and so restore the Premises, and the Lessee will promptly pay to the Company for the cost and expense of such restoration. In addition, at termination Lessee shall provide evidence, reasonably satisfactory to Company, that the condition of the Premises and all improvements thereon attributable to the acts and/or omissions of Lessee during the term of this Lease comply with all applicable laws, regulations and standards.

IN WITNESS WHEREOF, the parties have executed these presents
on _____, 1999.

UNION PACIFIC RAILROAD COMPANY

CITY OF CRYSTAL LAKE

By: _____

By: _____

Title: _____

Title: _____

(Municipal Seal)

Municipal Clerk

By: _____

Title: _____

Resolution/Ordinance number

SPECIFICATIONS

Unless otherwise modified by Order of the Illinois Commerce Commission:

1. No planting or other landscaping material shall be allowed within 16 feet of the edge of the nearest tie nor allowed to grow into this zone other than grass or ground cover, which will not grow in excess of three (3) feet in height.
2. Any ^{NEW} planting or other landscape material done on the railroad right-of-way within 500 feet of any grade crossing shall be maintained so as not to exceed a height of three (3) feet.
3. Any grading or future planting done on Company's property must be approved in writing by Company's Engineering Department located at 500 West Madison, Suite 3610, Chicago, Illinois 60661.
4. Any work done on Company's property closer than 16 feet from the edge of the nearest tie will require a flagman provided by Company at Lessee's expense.
5. There is to be no interference with Company facilities, including pole lines, drainage structures and signal apparatus.
6. There is to be no adverse effect to visibility or drainage on Company property.
7. Lessee shall not construct or permit to be constructed any building, structure, excavation or any other obstruction without the written consent of Company's Engineering Department.
8. The Union Pacific Railroad Company will not, in any way, share in the cost of landscaping or for any improvements to the area covered by this lease.
9. The Union Pacific Railroad Company will not be responsible for any damage to the landscaping or improvements.

ATTACHMENT/EXHIBIT

**ITEM TOO LARGE TO SCAN
COPY AVAILABLE FROM FORMAL FILE**